IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.07.2025

CORAM :

THE HON'BLE **MR.JUSTICE SUNDER MOHAN**

Crl.A.No.219 of 2015

P.C.Prabakaran ...Appellant/Complainant

vs.

V.Srinivasan ...Respondent/Accused

Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the order of acquittal dated 23.01.2015 made in STC No.128 of 2013 on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Tiruchengode.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.M.Guruprasad

JUDGMENT

The appeal challenges the Judgment of acquittal passed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Tiruchengode, in S.T.C.No.128 of 2013 dated 23.01.2015.

2. It is the case of the complainant/appellant that he along with the accused/respondent and one Mr.R.Nandhakumar, were partners of a firm by name Istich Fashions; that the complainant left the partnership firm in June 2011 and he joined a company by name Magnum Spinning Mills Private Limited; that he approached a Nationalized Bank for financial assistance; that since there was a loan outstanding by Istich Fashions, in which the complainant was a partner, the Bank refused the credit facility; that therefore, in order to expand his business and obtain a loan for his company, he was forced to settle the outstanding dues of Istich Fashions, to the tune of Rs.26,40,080/- (Rupees Twenty Six Lakhs Forty Thousand and Eighty only); that he thereafter, demanded from the accused and the other partner Mr.R.Nandhakumar, of Istich Fashions, their share of the loan which was

paid by him; that the accused issued two cheques one dated 24.12.2012 for Rs.5,80,000/- (Rupees Five Lakhs Eighty Thousand only) and another dated 26.12.2012 for Rs.15,00,000/- (Rupees Fifteen Lakhs only); that when the cheques were presented for collection, it was returned for the reasons "Insufficient Funds" on 27.12.2012; that the complainant had issued the statutory notice; that in spite of the statutory notice, the accused neither replied nor paid the money due under the two cheques and thus committed the offence under Section 138 of the Negotiable Instruments Act, 1881.

3. The complainant/appellant had examined three witnesses as P.W.1 to P.W.3 on his side and marked eighteen documents as Ex.P1 to P18. The accused/respondent had examined four witnesses as D.W.1 to D.W.4 on his side and marked nine documents as Exs.D1 to D9.

4. The trial Court found that the case of the appellant/complainant is that he had discharged the loan of Istich Fashions and therefore, the accused and one Mr.R.Nandhakumar, were liable to pay their share of the amount paid towards the discharge of the loan, is improbable; that the appellant had

been withdrawing money from the account of the partnership firm, just before he retired from the partnership firm and even after he retired; that the complainant had also admitted in his cross-examination that there were no reconciliation of the accounts and therefore, it was not determined as to what was the exact amount due to the complainant; that the cheques in question pertain to the year 2009 and the cheques bearing numbers preceding the subject cheques and following the subject cheques, were all encashed between May 1999 and August 1999 and therefore, the cheques could not have been issued in the year 2012 for the alleged dues towards the complainant; and thus, acquitted the appellant.

5. Mr.N.Manokaran, the learned counsel for the appellant/complainant would submit that the reasons assigned by the trial Court for acquittal are perverse; that the trial Court had not appreciated the evidence properly; that the respondent had not replied to the statutory notice, which itself would show that he had no defence; that the cross-examination of the complainant would suggest that the accused himself had elicited certain facts which would reiterate that the complainant

had repaid the loan of Istich Fashions; and that the trial Court had taken into consideration several irrelevant factors including the date on which the complainant left the partnership firm and with regard to non-filing of complaint against the accused for the misappropriation committed by him in the partnership firm.

6. Mr.M.Guruprasad, the learned counsel for the respondent/accused, *per contra,* submitted that there was no understanding between the appellant/complainant and the respondent/accused to the effect that if the appellant/complainant discharged the alleged loan of Istich Fashions, the respondent/accused would compensate the complainant/appellant; that in the cross-examination, the complainant had admitted that all the three partners were jointly and severally liable to pay the loan amount and that being the case, there was no necessity for the respondent to take upon himself the responsibility of repaying the entire loan amount; that in any case, their relationship was sour, as even according to the complainant, the accused/respondent has misappropriated the funds of the partnership firm and therefore, the respondent could not have issued two cheques for about a

sum of Rs.20,00,000/- (Rupees Twenty Lakhs only); and that there was no reason why two cheques had to be issued within a span of two days. He therefore submitted that considering all the above facts coupled with the fact that there is evidence to show that the cheque numbers preceding and following the subject cheques, were all encashed during the year 2009, the finding of the trial Court disbelieving the case of the complainant/appellant does not call for any interference and prayed for dismissal of the appeal.

7. As stated earlier, it is the case of the complainant/appellant that since the Bank had refused a credit facility to Magnum Spinning Mills Private Limited, where he joined after he left the partnership firm, he was forced to discharge the loan of Istich Fashions.

8. It is seen from the record that the complainant had not made a demand in writing from either the accused or from the other partner, Mr.R.Nandhakumar, for their contribution of the loan discharged by him. It is also not the case of the complainant that there was an agreement between the parties that if the complainant discharged the loan, the other partners

would reimburse him their share of the loan amount. Further it is not known as to why the respondent had issued two cheques one for Rs.15,00,000/-(Rupees Fifteen Lakhs only) and another for Rs.5,80,000/-(Rupees Five Lakhs Eighty Thousand only) on two different dates. There was no reason why he did not issue the cheque for the entire sum of Rs.26,40,000/-(Rupees Twenty Six Lakhs Forty Thousand only) if he had agreed to reimburse the complainant for the amount of the loan discharged by him.

9. It is further seen that P.W.1/the complainant/appellant had admitted in his cross-examination that all the three partners were equally liable to pay the Bank loan. In such a case, there was no necessity for the accused alone to pay the entire loan amount. Further, it is also an admitted fact that the accounts of the firm were not reconciled.

10. The trial Court has considered all the above aspects and held that it was highly improbable that the accused had issued two cheques in 2012, especially when the relationship between the appellant and the respondent at that stage was strained.

11. Though admittedly, the respondent had not responded to the statutory notice, in the facts of the case, this Court is of the view that it would not affect the defence case. If the accused is able to show from the evidence on record that the case of the complainant is improbable, then the fact that no reply was sent to the statutory notice, cannot be held against the accused.

12. Above all, this Court finds that D.W.4, the Manager of the Bank in which the accused maintained the account, had deposed that the cheques in question were issued in the year 2008 and had also marked Ex.D9, the account statement of the accused. In the said statement, it is seen that the cheque leaves bearing Nos.509618, 509619, 509620, and 509621 were all encashed in the year 2009. The cheques in question bear the nos. 509616 and 509622.

13. In the light of the above discussion, this Court is of the view that the defence of the accused that the cheques were not issued in the year 2012 and were issued in the year 2009 when the relationship between the partners

was good for the purpose of running the partnership firm, appears to be probable. The findings of the trial Court are reasonable and there is no perversity in the Judgment.

14. For all the reasons stated above, the Judgment of acquittal passed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Tiruchengode, in STC No.128 of 2013 dated 23.01.2015 is confirmed. Accordingly, the Criminal Appeal is dismissed.

07.07.2025

Index : yes/no
Neutral citation : yes/no
Speaking/Non-speaking order
dk

Copy to:

The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Tiruchengode.

SUNDER MOHAN,J.

dk

Crl.A.No.219 of 2015

07.07.2025